

**APPEAL OF
FRANK
TO SUPREME
COURT
NOT YET
ALLOWED**

Delay Until Monday
Re-

suits When Federal
Law

Passed in 1908,
Governing

Procedure in Such
Cases,
Is Cited.

***JUDGE NEWMAN
DENIES***

***WRIT OF HABEAS
CORPUS***

Makes Announcement,
How-

ever, That He “Is
Inclined

to Grant” the Prisoner
the

Right to Carry the
Case to

Washington.

Leo M. Frank, condemned to be hanged January 22 next, for the murder here in April, 1913, of Mary Phagan, Saturday lost another point in his legal battle to escape paying the death penalty, when Federal Judge W. T. Newman refused to grant a petition for a Writ of Habeas Corpus for Frank's release. A motion was immediately made by Frank's Attorneys requesting an Appeal to the United States Supreme Court, and Judge Newman announced he would give a decision on this motion Monday.

There was some confusion with regard to the Appeal, and it was at first announced that Judge Newman had granted it. The Judge announced at the close of the hearing that he was "inclined to grant the Appeal," but subsequently the Federal Law enacted in 1908 requiring a Federal Judge in granting an Appeal in Habeas Corpus Proceedings to issue a Certificate stating his opinion that there was probable cause for an Appeal, was brought to the Court's attention in chambers. He then informed the Attorneys that he would hold his decision on the matter in abeyance until Monday.

Law on Certificate.

"The law reads:"

"From the final decision by a Court of the United States in a Proceeding in Habeas Corpus where the detention complained of is by Authority of process issued out of a State Court, no Appeal to the Supreme Court shall be allowed unless the United States Court by which the final decision was rendered or a Justice of the Supreme Court shall be of opinion that there exists probable cause for an Appeal, in which event, on allowing the same, the said Court or Justice shall certify that there is probable cause for such allowance.'"

Before 1908, such a Certificate was not required. Should a Judge not forward such a Certificate, it was stated today that an Appeal would probably be dismissed by the Supreme Court.

An Appeal in the Frank Case, properly lodged, would not ordinarily come up for consideration by the Supreme Court for nearly two years, but most Applications by State officials to advance Habeas Corpus Appeals are granted. Atlanta lawyers believe the Supreme Court will reach a decision within sixty days.

Leo Frank's Claim.

The Writ was sought on the ground that Frank's Constitutional Rights were violated in that he was involuntarily absent from the Courtroom when the verdict was announced.

Attorneys Henry C. Peeples and Harry A. Alexander, on Frank's behalf, argued that Georgia State Courts lost jurisdiction of the Case when he was denied the right to face the Jury at the culmination of his trial. They declared that Frank is being deprived of his liberty under a conviction and judgment which they contend was rendered void by reason of the trial Court's action. They argued that the question was not one involving the State Courts' procedure, but one for the jurisdiction of the Federal Courts.

The Habeas Corpus hearing occupied four hours. Volumes of decisions having a bearing on the present angle of the Frank Case were cited by Attorneys Henry C. Peeples and Henry A. Alexander, Attorneys for the condemned man. No argument was called from Solicitor Dorsey or Attorney General Grice, Judge Newman delivering his decision at the close of the argument for the defense.

Suspend Execution Date.

If Judge Newman allows the Appeal, it automatically suspends the execution date. It will remain indefinitely stayed until the Case is settled by the Washington Court. Attorneys for both sides do not anticipate a decision before January 22, the day on which Frank was scheduled to die.

Frank's Attorneys, it has been stated, did not expect a victory before the Circuit Court. Their hope was to reopen the Case in the Supreme Court at Washington.

In delivering his verdict, Judge Newman had this to say:

"When this Application was presented to me, I asked that the Solicitor General and Attorney General be present. It is not necessary, however, that I hear from them. This matter has been tried in the State Supreme Court and other State Courts. The State Supreme Court held that the Case did not contain a Federal Question, or, if one had been contained, it should have been presented at the time of the motion extraordinary for a new trial."

“The decision was taken before the justices of the United States Supreme Court, and it was held that it is for the States to determine the method of practice and that which was done in the State Courts was a matter of practice and involved no Constitutional Point. The Status of the Case seems to be the same here as when it went to the United States Supreme Court. In view of this, I have not the jurisdiction or the power to grant the Writ.”

The argument of Mr. Peeples lasted for two hours. Mr. Alexander’s argument took up a similar length of time.
